



NORTHERN
IRELAND
HUMAN
RIGHTS
COMMISSION

Colm Gildernew MLA
Chair to the Committee for Health

Room 410
Parliament Buildings
Belfast
BT4 3XX

By email to: Committee.Health@niassembly.gov.uk

17 January 2022

Dear Chair,

Re: The Adoption and Children Bill

I am writing in response to the Committee correspondence dated 17 December 2021. Thank you for this opportunity to provide additional evidence on the Adoption and Children Bill.

The Northern Ireland Human Rights Commission (the Commission), pursuant to section 69(4) of the Northern Ireland Act 1998, advises the Assembly whether a Bill is compatible with human rights. The Commission, pursuant to section 78A(6) of the Northern Ireland Act 1998, must advise the Assembly (or a committee of the Assembly) whether a Bill is compatible with Article 2(1) of the Ireland/Northern Ireland Protocol (the Protocol). In accordance with these functions, the following advice is submitted to the Committee for Health on the Adoption and Children Bill, specifically in the context of the Chairperson's question on cross-border management of kinship care and adoption arrangements.

The Commission bases its advice on the full range of internationally accepted human rights standards, including the European Convention on Human Rights (ECHR), as incorporated by the Human Rights Act 1998, and the treaty obligations of the Council of Europe (CoE) and United Nations (UN) systems. In addition to these treaty standards, there exists a body of 'soft law' developed by the human rights bodies of the CoE and UN. These declarations and principles are non-binding but provide further guidance in respect of specific areas.

Protocol Article 2 requires the UK Government and the NI Executive to ensure that no diminution of rights, safeguards and equality of opportunities contained in the relevant part of the Belfast (Good Friday) Agreement occurs as a result of the UK's withdrawal from the EU. The Commission has not identified any issues which engage Protocol Article 2 in the current Bill. However, as discussed below, there may be wider human rights impacts as a result of the UK's Withdrawal from the EU as reciprocal mechanisms for cooperation associated with EU membership will no longer be available.

Intercountry Adoption and the 1993 Hague Convention

The Commission welcomes the Bill's incorporation of provisions of the Adoption (Intercountry Aspects) Act (Northern Ireland) 2001, which provides a statutory basis for the regulation of intercountry adoption and ratified the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption (the 1993 Hague Convention).¹

The Commission observes that the 1993 Hague Convention gives effect to key provisions within the UN Convention on the Rights of the Child (UN CRC) by establishing substantive safeguards and procedures "to ensure that intercountry adoption takes place in the best interests of the child and with respect for his or her fundamental rights as recognised in international law".²

For example, Hague Contracting States must: recognise that a child should be raised by his or her birth family or extended family whenever possible and consider national solutions first (implement the principle of subsidiarity);³ ensure the child is adoptable;⁴ preserve information about the child and his / her parents;⁵ evaluate thoroughly the prospective adoptive parents and match the child with a suitable family;⁶ prevent improper financial gain and corruption;⁷ impose additional safeguards where needed.

One of the pivotal changes that came with the introduction of the 1993 Hague Convention is its requirement that each Contracting State must have a "Central Authority" which oversees adoptions in its jurisdiction and serves as focal point on intercountry adoption issues with its counterparts in other States.⁸

Thereafter, the Convention sets out clearly which functions within the adoption process are to be performed by each Central Authority.

Ireland and the United Kingdom of Great Britain and Northern Ireland are signatories to the Hague Convention. The Adoption Authority is the Irish Central Authority under the Convention.⁹ The UK has four National Central Authorities,

¹ Ratified by the UK in 2003.

² Convention of 29 May 1993 on Protection of Children and Co-operation in Respect of Intercountry Adoption (the 1993 Hague Convention), Preamble and Article 1; see also UN CRC, Article 3, Article 20 and Article 21

³ The 1993 Hague Convention, Article 4

⁴ Ibid

⁵ The 1993 Hague Convention, Article 9

⁶ The 1993 Hague Convention, Article 5

⁷ The 1993 Hague Convention, Article 4 and Article 8

⁸ The 1993 Hague Convention, Article 6

⁹ See: [Adoption - Intercountry Adoption \(aai.gov.ie\)](http://www.aai.gov.ie)

one each for England, Scotland, Wales, and Northern Ireland. In practice, the Regional Intercountry Adoption Assessment Service (RIAAS) undertakes intercountry adoption services on behalf of the five Health and Social Care Trusts in Northern Ireland.¹⁰

The Commission welcomes the structure provided by the implementation of the 1993 Hague Convention which creates a system of cooperation between and within Contracting States.¹¹ These arrangements ultimately ensure that children are provided with protective measures and minimal procedural delays, while adoptive families are provided with more thorough and accurate information about eligible children and the overall process.

The Commission continues to welcome Chapter 6 of the Adoption and Children Bill for consolidating the statutory basis for the regulation of intercountry adoption in NI in accordance with international human rights standards and protections.¹²

However, as highlighted by the Committee Chair on 16 December 2021, it is not currently clear how the Bill will meet the needs of children for whom adoption is not appropriate, but who would benefit from the permanence provided by a kinship placement across the Irish border. It is acknowledged that the UK's withdrawal from the EU has raised additional complexity in this context, as examined below.

Special Guardianship Orders and the 1996 Hague Convention

The Bill introduces a new option for permanence by way of Special Guardianship Order (SGO). A special guardian would acquire parental responsibility for the child and may exercise it to the exclusion of others with parental responsibility, except in very exceptional circumstances. Unlike adoption, the child's legal relationship with his or her birth parents is not severed, however the special guardian has clear responsibility for day to day decisions about caring for the child or young person.

SGOs are therefore an option for those who do not wish to go through the adoption process, but who want to provide greater security for a child by placing him or her with a kinship carer. In NI, it is foreseeable that such cases may involve an extended family member who lives across the Irish border. To ensure that children with cross-border connections do not lose out on such a placement under an SGO, the Committee may wish to ascertain from the Department of Health how cross-border cases will fit within the proposed domestic framework for assessment and placement for special guardianship.

While there is no equivalent to SGOs in Irish law, case law from England and Wales has shown that such an order is capable of being enforced in Ireland,

¹⁰ See: [Types of Adoption - Adoption & Fostering \(hscni.net\)](https://www.hscni.net/types-of-adoption-adoption-fostering)

¹¹ There are currently 104 Contracting Parties to the 1993 Hague Convention, accessed on 11/01/2022 at [HCCH | #33 - Status table](#)

¹² See previous submissions: NIHRC, 'Submission to Committee for Health on the Adoption and Children Bill' (2021); NIHRC, 'Adoption and Children (NI) Bill Consultation: Key Human Rights Aspects' (2017); NIHRC, 'Adoption (Intercountry Aspects) Bill' (NI)' (2001)

albeit under the auspices of EU Law.¹³ Before 1 January 2021, cross-border disputes within the EU relating to children were regulated under Brussels IIa Regulation (or Brussels IIa).¹⁴ This provided rules for establishing jurisdiction and ensured that orders relating to parental responsibility issued in one EU member state could be recognised and enforced in another. Neither the UK-EU Withdrawal Agreement, nor the UK-EU Trade and Cooperation Agreement address cooperation on matters on civil justice and no other replacement of the Brussels IIa system has been put in place. Therefore, for cases instituted after 1 January 2021, the mechanisms for inter-country placement are now governed by common law and the 1996 Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (the 1996 Hague Convention).¹⁵

As before, the 1996 Hague Convention confers functions on designated Central Authorities within each Contracting State. England, Wales, Scotland and Northern Ireland each have their own Central Authority. The Department of Justice has been designated as the Central Authority under the 1996 Convention for NI. One of its key functions is "to request the competent authorities in Northern Ireland to consider the need to take measures for the protection of a child habitually resident in Northern Ireland upon the request of another Contracting State with which the child has a substantial connection".¹⁶

The Committee may wish to seek assurances from the Department of Justice and the Department of Health that the loss of the Brussels IIa framework has not adversely impacted how the cross-border placement of children is managed. In the context of the current Bill, the Committee may wish to ask the Minister if consideration is being given to whether placing children under SGOs overseas or cross-border may warrant a distinct form of regulatory framework for domestic cases (for example a bilateral agreement between UK-Ireland) to pre-empt any difficulties that may arise.

The Commission highlights that, beyond the challenge of cross-border assessments of potential special guardians, there are further queries as to how the child will be supported in a placement, how that placement will be monitored and what will happen if the placement breaks down.

In closing, the Commission reiterates its support for the expedition of the Adoption and Children Bill which contains vital and long overdue reforms for NI adoption law and child safeguarding.

I hope these comments are helpful. Should any further human rights issues arise within the context of the Committee's consideration of the Bill, the Commission would be happy to advise. We remain at the disposal of the Committee for further advice or engagement as necessary.

¹³ Re S (No 3) (Care Proceedings) (Article 56: Placement in the Republic of Ireland) [2019] EWFC

¹⁴ Council Regulation 2201/2003, concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility (Brussels IIa), 27 November 2003.

¹⁵ Ratified by the UK in 2012.

¹⁶ See: [Child abduction 1996 Hague Convention | Department of Justice \(justice-ni.gov.uk\)](https://www.justice-ni.gov.uk/child-abduction-1996-hague-convention)

Yours sincerely,

A handwritten signature in black ink, appearing to read "A. Kilpatrick". The signature is fluid and cursive, with a large initial "A" and a long, sweeping underline.

Alyson Kilpatrick BL
Chief Commissioner